

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20 CV 212 MR WCM

ALPHA INSULATION &
WATER PROOFING SERVICES
COMPANY

Plaintiff,

v.

SEARS CONTRACT, INC.

Defendant.

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ORDER

This matter is before the Court on Defendant's Rule 12 Motions to Dismiss (the "Motion to Dismiss," Doc. 6).

The Motion to Dismiss, which seeks dismissal of Plaintiff's claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), was filed on October 8, 2020. Doc. 6. Six days later, on October 14, 2020, Plaintiff filed an Amended Complaint. Doc. 7.

"A party may amend its pleading once as a matter of course within ... 21 days after service of a motion under Rule 12(b)...." Fed. R. Civ. Pro. 15(a)(1)(B). Because Plaintiff has amended its complaint within the time period provided by Rule 15(a)(1)(B), the Motion to Dismiss is now moot. See Thomas v. Cumberland County Board of Education, No. 5:10-cv-552, 2011 WL 3664891,

at *1 (E.D.N.C. Aug. 18, 2011) (“Because plaintiff had ‘an absolute right to amend [her] complaint ... and need not [have sought] leave of court to do so’ her motion to amend must be ALLOWED. Defendant’s motion to dismiss the original complaint is DENIED AS MOOT, without prejudice to renewal.”) (quoting Galustian v. Peter, 591 F.3d 724, 730 (4th Cir. 2010) (modifications in Thomas)).

IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss (Doc. 6) is **DENIED AS MOOT**.

Signed: October 19, 2020



W. Carleton Metcalf
United States Magistrate Judge

